

LINK Consultation Response

Scottish Government Extending PDR Consultation
28 January 2020



Scottish
Environment
LINK

Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland

Response from the LINK Hilltracks Group

1. Do you have any comments on the proposed Work Programme, including the proposed phasing and groupings?

I am responding on behalf of the Scottish Environment LINK Hill tracks sub group, and these comments relate solely to the issue of hill tracks (private ways). We support the inclusion of hill tracks in the first phase of the PDR review work programme. We believe that our work has helped to demonstrate the high levels of public interest and concern over this issue and therefore it is appropriate that it is considered as soon as possible.

We fully support the LINK Planning Group submission to this consultation which covers the other topics below relating to the Sustainability Appraisal.

Members of the LINK Hill tracks sub group are as follows:

Association for the Protection of Rural Scotland, Cairngorms Campaign, Badenoch & Strathspey Conservation Group, John Muir Trust, National Trust for Scotland, North East Mountain Trust, Ramblers Scotland, RSPB Scotland, Scottish Campaign for National Parks, Scottish Wild Land Group

5. Do you have any other comments on the Sustainability Appraisal report?

We would like to put forward our recommendations for change to the legislation.

We believe that the main option to improve the current situation is as follows below, and look forward to the forthcoming hilltracks consultation to discuss the matter further:

1. All proposals for new agricultural tracks and track alterations should lose PDRs. This option has the benefit of being simple for all land managers to understand and it would not add greatly to requirements under the existing Prior Notification (PN) process, since the information required to be submitted to planning authorities for PNs is already significant, if done thoroughly. This option would involve a planning fee being charged, which would help planning authorities to achieve cost recovery for the time spent scrutinising applications. Also, this option would remove the current loophole whereby tracks are benefiting from PDRs by claiming agricultural use, when in fact the main purpose is for field sports. The government's 2016 review of the Prior Notification system found that in 2015 only 60 tracks out of 279 were for agricultural use so the impact on bona fide agricultural tracks is likely to be small. However, there is the option for ministers to vary the planning application fee, for example to reduce it for tracks on crofting land or on land holdings below a certain size. Under this option, forestry tracks would still require Prior Notification, although maintenance activities on all tracks would not. Note that 'alteration' includes changes to the width, line taken, surfacing or drainage of a track whereas 'maintenance' only involves routine repairs such as the clearing of existing ditches or the filling of potholes. We envisage that alterations should involve submission of a planning application, whereas maintenance would not. This is the current situation but our evidence shows it is not always followed and there is a need for further clarification of what is meant by each term.



Other options

A) The treatment of forestry tracks. The classes relating to private ways in the General Permitted Development Order 1992 cover tracks for both agricultural and forestry purposes and therefore LINK has looked at tracks for both uses. However, while concerns remain as to the standard of new/altered forestry tracks and the understanding within the industry of the need for PN, in our 2018 Changing Tracks report we set out why the approach for forestry tracks is not straightforward by comparison with agricultural tracks. Forestry tracks already are subject to a level of regulation and oversight within the forestry plan system and the main purpose of the track is not usually questioned. However, forest plans often don't include tracks which will be used for extraction and this can cause problems when these activities eventually take place, although a PN is still required for these tracks. LINK is continuing to consider how best to address our concerns regarding forestry tracks.

B) It has been suggested that all tracks in protected areas (as defined) should require planning permission. Protected areas could include National Parks, National Scenic Areas, SSSIs, historic Battlefields and other sites as Ministers require, with the lesser requirement for Prior Notification retained for all other tracks. This would be a slight improvement on the current situation but we would not recommend it by itself as there are many areas of great local and national landscape and environmental value which are not designated/covered by protected areas, including, for example, areas highly valued for their qualities of wildness such as Wild Land Areas. If this suggested change were to be adopted by itself, it would have the major disadvantage of not addressing the significant environmental and visual damage our monitors and members of the public regularly report to us. In addition, it would not address the democratic deficit which we have identified as a major failing of the PN system in general. If it is only tracks in protected areas which require planning permission, this would still not enable the general public, some of whom have considerable interest in this issue, to express a view on tracks outwith these areas.

C) All tracks on land used for field sports to require planning permission. We would anticipate that this option would be combined with point B above to cover the areas of land where tracks have historically been causing the most concern to the campaign and our members. This option would directly target the tracks which are currently being constructed without full planning permission, mainly in upland areas, with what we believe is the primary purpose of supporting field sports activities. However, clear and robust definitions of the land concerned under this option would be needed. One suggestion is for tracks on landholdings which are registered for shooting activities to require planning permission. As well as including deer and grouse activities, it's possible that this measure would also encompass new tracks built by some lowland farmers who have registered game bird shooting activities. However, essentially we feel it would be beneficial from a public interest perspective that such new tracks should have planning permission, if their primary purpose is to service shooting activities.

For more information contact:

Helen Todd
Co-Convener of the LINK Hilltracks Group
helen.todd@ramblers.org.uk